



FILED

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Kevin L. Smith

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of the supreme court,
court of appeals and
tax court

NAJAM, Judge

STATEMENT OF THE CASE

Randy Bales was convicted of Operating a Vehicle After Being Adjudged an Habitual Traffic Offender, a Class D felony, and Operating While Intoxicated, as a Class A misdemeanor, pursuant to a plea agreement. Bales subsequently petitioned for post-conviction relief, which the post-conviction court denied. He now appeals, challenging the post-conviction court's judgment. Bales raises a single issue for our review, namely, whether the post-conviction court erred when it concluded that his guilty plea was made knowingly and voluntarily.

We affirm.

FACTS AND PROCEDURAL HISTORY

On July 21, 2003, Bales pleaded guilty to operating a vehicle after being adjudged an habitual traffic offender, a Class D felony, and operating while intoxicated, as a Class A misdemeanor. In his signed plea agreement, which the State submitted to the trial court, Bales agreed that his driver's license "shall be suspended for life" on the habitual traffic offender count. Appellant's App. at 11. During the change of plea hearing, the trial court was confused about which offenses were part of Bales' plea agreement and about the term of the driver's license suspension. But the trial court quickly corrected its mistakes on both issues, and Bales stated that he understood both the offenses to which he was pleading guilty and the lifetime driver's license suspension.

In his post-conviction petition, Bales alleged that the confusion during the change of plea hearing rendered his guilty plea unknowing and involuntary. The post-conviction court found and concluded otherwise. This appeal ensued.

DISCUSSION AND DECISION

The petitioner bears the burden of establishing his grounds for post-conviction relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); Harrison v. State, 707 N.E.2d 767, 773 (Ind. 1999), cert. denied, 529 U.S. 1088 (2000). To the extent the post-conviction court denied relief in the instant case, Bales appeals from a negative judgment and faces the rigorous burden of showing that the evidence as a whole “‘leads unerringly and unmistakably to a conclusion opposite to that reached by the [] court.’” See Williams v. State, 706 N.E.2d 149, 153 (Ind. 1999) (quoting Weatherford v. State, 619 N.E.2d 915, 917 (Ind. 1993)), cert. denied, 529 U.S. 1113 (2000). It is only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion, that its decision will be disturbed as contrary to law. Bivins v. State, 735 N.E.2d 1116, 1121 (Ind. 2000).

Bales contends that the post-conviction court erred when it concluded that he knowingly and voluntarily entered into the plea agreement. In particular, Bales maintains that, given the confusion among the trial court and both attorneys during the change of plea hearing, the evidence shows that he did not understand the terms of his plea. We cannot agree.

Upon review of a guilty plea, we look at all evidence which was before the post-conviction court. Baker v. State, 768 N.E.2d 477, 479 (Ind. Ct. App. 2002). We will not reverse the post-conviction court’s determination if the evidence supports that the guilty plea was knowing, voluntary, and intelligent. Id. When a defendant can show that he

was coerced or misled into pleading guilty by the judge, prosecutor, or defense counsel, he presents a colorable claim that his plea was not voluntary. Id.

Here, the transcript of the guilty plea hearing shows that the trial court was initially confused regarding whether Bales was pleading guilty to operating while intoxicated or operating with a blood alcohol content more than the legal limit. And the Prosecutor and Bales' counsel were also confused about which offense was included in the plea agreement. But that misunderstanding was very quickly cleared up by the trial court after it referred to the written plea agreement. There is no indication in the record that that momentary confusion misled Bales into pleading guilty.

Next, the trial court incorrectly stated that Bales' habitual traffic offender conviction would result in his driver's license being suspended for one or two years. But a short time later, when the trial court read the terms of the plea agreement, the court stated that Bales' driver's license would be suspended for life. And the trial court stated, "Now is that your understanding in the plea agreement?" Appellant's App. at 25. Bales responded, "Yes, ma'am." Id. And, shortly thereafter, the following colloquy occurred:

Court: And the only other thing I wanted to mention was on the license suspension on the operating a vehicle after being adjudged an habitual traffic offender. [sic] Do you understand if I enter judgment of conviction on that count as a D felony that the lifetime suspension is mandatory?

Bales: Yes.

Court: Do you understand that? If judgment of conviction were to be entered as an A misdemeanor I would have some discretion in terms of the length of suspension. But with a D felony it is a lifetime suspension.

Bales: I understand.

Court: Alright. And you still wish to proceed with the plea agreement?

Bales: Yes ma'am.

Id. at 31-32.

Given the evidence, we cannot say that the post-conviction court erred when it found that the trial court adequately cleared up the misunderstandings regarding Bales' convictions and license suspension. Despite the initial confusion, the trial court thoroughly explained the guilty plea to Bales, and Bales acknowledged that he understood the terms of the written agreement. Further, Bales signed the written plea agreement, and he does not contend on appeal that he misunderstood the terms of that agreement when he signed it. Bales has not shown that his plea was not made knowingly and voluntarily. The post-conviction court did not err when it denied Bales' petition.

Affirmed.

ROBB, J., and MAY, J., concur.